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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ELIO ANIBAL GONZALEZ PACHECO,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-72139

Agency No. A70-816-292

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted May 15, 2006^{**}

Before: B. FLETCHER, TROTT, and CALLAHAN, Circuit Judges.

Elio Anibal Gonzalez Pacheco, a native and citizen of Guatemala, petitions for review of an order of the Board of Immigration Appeals (“BIA”) adopting and affirming an Immigration Judge’s (“IJ”) order denying his applications for asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”).

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We have jurisdiction under 8 U.S.C. § 1252. Reviewing for substantial evidence, *Chebchoub v. INS*, 257 F.3d 1038, 1042 (9th Cir. 2001), we deny the petition for review.

Substantial evidence supports the IJ's adverse credibility finding because the discrepancies regarding whether Pacheco's father was abducted or murdered by guerrillas is not minor and goes to the heart of his asylum claim. *See id.* at 1043.

Because Pacheco cannot meet the lower standard of eligibility for asylum, he has failed to show that he is entitled to withholding of removal. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Pacheco has waived his claim for protection under CAT by failing to raise any arguments in his opening brief challenging the denial of this claim. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996).

To the extent Pacheco contends his due process rights were violated, he was afforded an opportunity to present the evidence he contends was excluded. *See Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). There is no evidence in the record to suggest that the IJ excluded any evidence Pacheco offered.

PETITION FOR REVIEW DENIED.